

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ROY L. PERRY-BEY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:23-cv-1165-LMB-IDD
)	
DONALD J. TRUMP, et al.,)	
)	
Defendants.)	

**COMMONWEALTH DEFENDANTS’ RESPONSE TO
PLAINTIFFS’ JUDICIAL NOTICE IN SUPPORT OF
EMERGENCY MOTION TO STAY (ECF NO. 70)**

The Virginia State Board of Elections and Department of Elections (collectively, the “Commonwealth Defendants”), by counsel, hereby respond to and oppose Plaintiffs’ Judicial Notice in Support of Emergency Motion to Stay. The “Judicial Notice” appears to be a third motion to stay. *See* ECF No. 70 (“Plaintiffs Roy L. Perry-Bey and Carlos A. Howard, hereby moves [sic] this Court for an order staying further proceedings”). The Commonwealth Defendants therefore respectfully ask the Court to deny the motion for the same reasons they presented in their Opposition to Plaintiffs’ Motions to Stay. *See* ECF No. 69.

In addition, the Commonwealth Defendants note that *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, No. 22-1395, 2023 U.S. App. LEXIS 30756 (8th Cir. Nov. 20, 2023), does nothing to support Plaintiffs’ Motions for a Stay. First, the Eighth Circuit’s holding in that case would eliminate Plaintiffs’ ability to bring this action at the outset. *Compare id.* at *3 (“Did Congress give private plaintiffs the ability to sue under § 2 of the Voting Rights Act? Text and structure reveal that the answer is no”), *with* Commonwealth Defendants’ Mem. in Support of Mot. to Dismiss, ECF No. 32 at 8–9, 11–12 (observing that Plaintiffs fail to

state any cause of action apart from the alleged violation of the Voting Rights Act). If Plaintiffs lack the ability to bring a § 2 Voting Rights Act claim, a speedy resolution of the Defendants' motions to dismiss would promote judicial economy and reduce the risk prejudice to Defendants. Second, though *Arkansas State Conference NAACP* may be illuminating and persuasive authority (and the Commonwealth Defendants submit that it is), the Eighth Circuit's holding is not binding on this Court in general or on this matter in particular. *Cf. McBurney v. Young*, 667 F.3d 454, 465 (4th Cir. 2012), *aff'd*, 569 U.S. 221 (2013) (writing that "out-of-circuit authority . . . is not binding on this Court"). Last, granting a stay on the basis that an out-of-circuit case may be appealed to the Supreme Court, which may—or may not—hear the case is simply too uncertain to justify the significant prejudice that would redound to the Commonwealth Defendants and Virginia's local election officials. *See* ECF No. 69 at 4–6.

Insofar as the Judicial Notice in Support of Emergency Motion to Stay is construed as another motion for a stay, it should be denied. Should the Court construe it as a simple request to take judicial notice of a recent (and relevant) case, the Commonwealth Defendants maintain that it strongly supports their Motion to Dismiss.

Dated: December 15, 2023

Respectfully submitted,

VIRGINIA STATE BOARD OF ELECTIONS
VIRGINIA DEPARTMENT OF ELECTIONS

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on December 15, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties of record. I further certify that I mailed a copy of the foregoing to:

Carlos A. Howard
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